

THE FIVE HUNDRED FOURTEENTH OMNIBUS OBJECTION TO CLAIMS SEEKS TO DISALLOW AND EXPUNGE CERTAIN FILED PROOFS OF CLAIM. PARTIES RECEIVING THIS NOTICE SHOULD REVIEW THE OBJECTION TO SEE IF THEIR NAME(S) AND/OR CLAIM(S) ARE LOCATED IN THE OBJECTION AND/OR THE EXHIBIT ATTACHED THERETO TO DETERMINE WHETHER THE OBJECTION AFFECTS THEIR CLAIM(S).

IF YOU HAVE QUESTIONS, PLEASE CONTACT LEHMAN BROTHERS HOLDINGS INC.'S COUNSEL, MELISSA SIEGEL, AT 212-310-8054.

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Garrett A. Fail

Attorneys for Lehman Brothers Holdings Inc.
and Certain of Its Affiliates

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re : Chapter 11 Case No.
:
LEHMAN BROTHERS HOLDINGS INC., et al., : 08-13555 (SCC)
:
Debtors. : (Jointly Administered)
-----X

NOTICE OF HEARING ON THE PLAN ADMINISTRATOR'S FIVE HUNDRED FOURTEENTH OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY CLAIMS)

PLEASE TAKE NOTICE that on November 16, 2015 Lehman Brothers Holdings Inc. ("LBHI"), as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors for the entities in the above-referenced chapter 11 cases, filed the five hundred fourteenth omnibus objection to claims

(the “Five Hundred Fourteenth Omnibus Objection to Claims”), and that a hearing (the “Hearing”) to consider the Five Hundred Fourteenth Omnibus Objection to Claims will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, in Courtroom 623 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **December 17, 2015 at 10:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses to the Five Hundred Fourteenth Omnibus Objection to Claims must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court’s filing system, and (b) by all other parties in interest, on a CD-ROM or 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at www.nysb.uscourts.gov), and shall be served in accordance with General Order M-399 upon (i) the chambers of the Honorable Shelley C. Chapman, One Bowling Green, New York, New York 10004, Courtroom 623; (ii) attorneys for LBHI, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Garrett A. Fail, Esq., and Melissa Siegel, Esq.) and (iii) the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: William K. Harrington, Esq., Susan Golden, Esq., and Andrea B. Schwartz, Esq.); so as to be so filed and received by no later than **December 10, 2015 at 4:00 p.m. (Eastern Time)** (the “Response Deadline”).

PLEASE TAKE FURTHER NOTICE that if no responses are timely filed and served with respect to the Five Hundred Fourteenth Omnibus Objection to Claims or any claim set forth thereon, the Plan Administrator may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Five Hundred Fourteenth Omnibus Objection to Claims, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: November 16, 2015
New York, New York

/s/ Garrett A. Fail
Garrett A. Fail

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Lehman Brothers Holdings Inc.
and Certain of Its Affiliates

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Garrett A. Fail

Attorneys for Lehman Brothers Holdings Inc.
and Certain of Its Affiliates

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----x
In re : Chapter 11 Case No.
:
LEHMAN BROTHERS HOLDINGS INC., et al., : **08-13555 (SCC)**
:
Debtors. : (Jointly Administered)
-----x

**THE PLAN ADMINISTRATOR'S FIVE HUNDRED FOURTEENTH
OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY CLAIMS)**

**THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN
FILED PROOFS OF CLAIM. PARTIES RECEIVING THIS FIVE
HUNDRED FOURTEENTH OMNIBUS OBJECTION TO CLAIMS
SHOULD REVIEW THE OBJECTION TO SEE IF THEIR NAME(S)
AND/OR CLAIM(S) ARE LOCATED IN THE OBJECTION AND/OR THE
EXHIBIT ATTACHED THERETO TO DETERMINE WHETHER THE
OBJECTION AFFECTS THEIR CLAIM(S).**

**IF YOU HAVE QUESTIONS, PLEASE CONTACT
LEHMAN BROTHERS HOLDINGS INC.'S COUNSEL,
MELISSA SIEGEL, AT 212-310-8054.**

TO THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Holdings Inc. (“LBHI”), as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the “Plan”) for the entities in the above-referenced chapter 11 cases (collectively, the “Chapter 11 Estates”), respectfully represents as follows:

RELIEF REQUESTED

1. The Plan Administrator files this objection pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and this Court’s order approving procedures for the filing of omnibus objections to proofs of claim filed in these chapter 11 cases (the “Procedures Order”) [ECF No. 6664], seeking disallowance and expungement of each of the proofs of claim listed on Exhibit A annexed hereto (collectively, the “No Liability Claims”).

JURISDICTION

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

A. General Background

3. Commencing on September 15, 2008 and periodically thereafter, LBHI and certain of its subsidiaries commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

4. On July 2, 2009, this Court entered an order setting forth the procedures and deadlines for filing proofs of claim in these chapter 11 cases (the “Bar Date Order”) [ECF

No. 4271], which requires, among other things, that “each Proof of Claim must . . . (vi) include supporting documentation or an explanation as to why documentation is not available.” (Bar Date Order at 6.) The supporting documentation requirement was specifically set forth on the face of the Court-approved proof of claim form. (*Id.* at Exhibit B.) Furthermore, the Bar Date Order provides that “any holder of a claim against the Debtors who is required, but fails to file a proof of such claim in accordance with the Bar Date Order on or before the Bar Date . . . specifying the applicable Debtor and other requirements set forth herein, shall forever be barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim with respect thereto).” (*Id.* at 9-10). The Bar Date Order further provided that “each holder of a claim against a Debtor based on . . . a Guarantee must . . . complete the electronic Guarantee Questionnaire.” Exhibit D to the Bar Date Order was a version of the Guarantee Questionnaire, which required the claimant to, among other things, set forth the information forming the basis of the claimant’s assertion of a guarantee. A copy of the Bar Date Order was made publicly available at <http://www.lehmandocket.com>.

5. The Bar Date Notice also prominently stated in bold-face type that **“any creditor who fails to file a Proof of Claim in accordance with the Bar Date Order on or before the Bar Date . . . specifying the applicable Debtor and other requirements set forth in the Bar Date Order, for any claim such creditor holds or wishes to assert against the Debtors, will be forever barred, estopped, and enjoined from asserting such claim (and from filing a Proof of Claim with respect to such claim).”** (*Id.* at 6 (emphasis in original)).

6. On January 14, 2010, the Court entered the Procedures Order, which authorizes the Chapter 11 Estates to file omnibus objections to claims on various grounds,

including those set forth in Bankruptcy Rule 3007(d) and those additional grounds set forth in the Procedures Order.

7. On December 6, 2011 the Court approved and entered an order confirming the Plan [ECF No. 23023]. The Plan became effective on March 6, 2012.

8. Pursuant to the Plan, the Plan Administrator is authorized to interpose and prosecute objections to claims filed against the Chapter 11 Estates.

B. The No Liability Claims

9. The No Liability Claims assert that LBHI, as an alleged guarantor, is liable for amounts purportedly owed to the Claimants by one of two foreign, non-Debtor affiliates: Lehman Brothers Limited (“LBL”) or Lehman Brothers Bankhaus AG, London Branch (“LBB”). Claim number 8033 asserts \$17,950.59 is owed for “services provided as an employee of Lehman Brothers Limited.” Claim numbers 21850, 21897, and 21898 each assert amounts are owed for a “[g]uarantee on a bank loan participation” from LBB.

THE NO LIABILITY CLAIMS SHOULD BE DISALLOWED AND EXPUNGED

10. A filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. *See In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009); *In re Adelphia Commc’ns Corp.*, No. 02-41729, 2007 Bankr. LEXIS 660, at *15 (Bankr. S.D.N.Y. Feb. 20, 2007); *In re Rockefeller Ctr. Props.*, 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b)(1).

A. Claim Number 8033

11. There is no basis for liability of LBHI for claim number 8033. The claim asserts LBHI issued a guarantee of the liabilities of LBL, but the claim does not reference or attach any specific or general guarantee of LBL's liabilities issued by LBHI. LBHI is not aware of any such guarantee. The claimant did not file a Guarantee Questionnaire as required by the Bar Date Order to assert a guarantee claim, and no additional information was provided to LBHI in support of the claim. Without proof of a guarantee by LBHI, claim number 8033 does not constitute a valid *prima facie* claim. Accordingly, claim number 8033 should be disallowed and expunged in its entirety.

12. The Bar Date Order specifically requires that "each Proof of Claim must: . . . include supporting documentation or an explanation as to why documentation is not available." (Bar Date Order at 6 (emphasis added)). Notice of the Bar Date Order's supporting documentation requirement was specifically provided via the Bar Date Notice. The Bar Date Notice included instructions on how to complete the proof of claim forms and a warning that failure to comply with those instructions would result in claims being barred. (See Bar Date Notice at 4, 6). This requirement for proofs of claim is not a unique one. Indeed, this Court and others in the Southern District of New York have entered similar orders requiring that proofs of claim include supporting documentation or an explanation as to why documentation is unavailable. (*See In re Finlay Enterprises, Inc.*, No. 09-14873 (JMP) (Peck, J.), Oct. 20, 2009 Order [ECF No. 316] at 6; *see also In re AGT Crunch Acquisition LLC, et al.*, No. 09-12889 (REG) (Gerber, J.), Oct. 14, 2009 Order [ECF No. 554] at 2-3). The Bankruptcy Rules' official proof of claim form also includes this standard requirement. The Court has disallowed

thousands of claims in these cases for the same reason and it would be unfair to treat claim number 8033 differently.

B. Claim Numbers 21850, 21897, 21898

13. In support of claim numbers 21805, 21897, and 21898, claimants refer to a June 2005 resolution of the board of directors of LBHI (the “Corporate Resolution”) as the purported guarantee of LBB’s obligations for participation agreements entered into in more than three years later, in June 2008.

14. A guaranty is a contractual undertaking by one party, the guarantor, to satisfy the obligations of another party, the primary obligor, to a third party, the creditor, in the event of a default by the primary obligor. *See Nanjing Textiles IMP/EXP Corp. v. NCC Sportswear Corp.*, No. 06 Civ. 52(JGK), 2006 WL 2337186, at *13 (S.D.N.Y. Aug. 11, 2006); RESTATEMENT (THIRD) OF SURETYSHP & GUARANTY § 1 cmts. f, g (1996); BLACK’S LAW DICTIONARY (9th ed. 2009); 38 AM. JUR. 2D *Guaranty* § 1 (2014).

15. Like all contracts, acceptance is a crucial element in forming a valid guaranty contract. The United States Supreme Court in *Davis Sewing-Mach. Co. v. Richards*, 115 U.S. 524 (1885), explained:

A contract of guaranty, like every other contract, can only be made by mutual assent of the parties. . . . [I]f the guaranty is signed by the guarantor without any previous request of the other party, and in his absence, for no consideration moving between them except future advances to be made to the principal debtor, the guaranty is in legal effect an offer or proposal on the part of the guarantor, *needing an acceptance by the other party to complete the contract*.

Id. at 525 (emphasis added)¹

¹ Furthermore, under the New York Statute of Frauds, a guaranty contract must be in writing and signed by the guarantor. *See* N.Y. GEN. OBLIG. LAW § 5-701(a)(2) (McKinney 2002); *see also DeRosis v. Kaufman*, 641 N.Y.S.2d 831, 832–34 (N.Y. App. Div. 1996). The Plan Administrator does not concede, and reserves all of its rights to argue that the Corporate Resolution is not a guaranty contract of any kind and that the Corporate Resolution would not satisfy the Statute of Frauds.

16. Specific guaranties identify the benefiting creditor or, “with precision,” the underlying agreements being guaranteed. *See, e.g., Cavendish Traders, Ltd. v. Nice Skate Shoes, Ltd.*, 117 F. Supp. 2d 394, 400 (S.D.N.Y. 2000) (stating that a valid guaranty must describe “with precision the obligation to which the person is bound”). None of the proofs of claim or the Guarantee Questionnaires identifies a specific guarantee to a third party of LBB’s obligations under the relevant loan participation agreements.

17. To benefit from a general guaranty, a creditor must show that it knew of the existence of the guaranty and acted in reliance upon its terms when entering into the transaction with the primary obligor. General guaranties are offers that can be accepted by anyone to whom they are presented and do not necessarily specify the particular transactions that will be guaranteed. *See Evansville Nat'l Bank v. Kaufman*, 93 N.Y. 273, 276 (1883); 38 AM. JUR. 2D *Guaranty* § 14; *see also Philip Carey Co. v. Duffy*, 10 N.Y.S.2d 876, 876 (N.Y. App. Div. 1939). Acceptance of a general guaranty may be indicated by a party extending credit in reliance on the guaranty—and the extension of credit also qualifies as consideration for the guaranty. *See Evansville Nat'l Bank*, 93 N.Y. at 279; 63 N.Y. JUR. 2D *Guaranty and Suretyship* § 78 (2014); *see also Union Carbide Corp. v. Katz*, 489 F.2d 1374, 1376 (7th Cir. 1973); *Farmers' State Bank of York v. Brock*, 234 N.W. 92, 94 (Neb. 1931). As the court in *Federal Deposit Insurance Corp. v. Schumacher*, 660 F. Supp. 6 (E.D.N.Y. 1984), explained:

It is, of course, elementary that a creditor's right to enforce a contract of guaranty must be based upon knowledge of the existence of the guaranty and that the credit must be extended in reliance thereon[.]

Id. at 8 (citations omitted). Indeed, it is well-settled that:

A “general” guaranty is addressed to persons generally and may be enforced by anyone to whom it is presented although it has been recognized that the person so acting must have had definite knowledge of the existence of the guaranty and acted in reliance on it.

38 AM. JUR. 2D *Guaranty* § 14.

18. Therefore, courts consistently require knowledge and reliance in enforcing claims based on general guarantees. *See, e.g., Philip Carey Co. v. Duffy*, 10 N.Y.S.2d 876 (N.Y. App. Div. 1939); *see also Joe Balestrieri & Co. v. Comm'r of Internal Revenue*, 177 F.2d 867, 873 (9th Cir. 1949) (recognizing the validity of guaranty claim where guaranty was made at the request of the prospective creditor and was delivered by the primary obligor); *J. C. Wattenbarger & Sons v. Sanders*, 30 Cal. Rptr. 910, 915 (Cal. Ct. App. 1963) (rejecting guaranty claim where there was “no proof that credit was extended with knowledge of it and reliance upon it”); *Calcot Ass'n v. Coast Cotton Mills*, 295 P.2d 1, 4 (Cal. Dist. Ct. App. 1956) (recognizing guaranty claim where court recognized that product was delivered to the primary obligor “only because the guaranties had been made”).

19. To the extent that the Corporate Resolution is found to be a guarantee, it could be, at best, a general guarantee. It does not identify any particular counterparty or transaction to which it might apply, and certainly does not identify any “with precision.” *See Cavendish Traders, Ltd.*, 117 F. Supp. 2d at 400. Accordingly, a guarantee claim based on the Corporate Resolution alone could be enforceable only by a creditor that establishes – as a required, *prima facie* element in its claim – that it knew of and relied upon the Corporate Resolution when transacting business with the relevant primary obligor.

20. The claimants asserting claim numbers 21805, 21897, and 21898 fail to assert knowledge of or reliance upon the Corporate Resolution prior to entering into transactions with LBB. The claimants provide no evidence to even suggest an inference. As such, none of the claimants meet the basic threshold of proof necessary to establish a claim. Consequently, these No Liability Claims must be disallowed and expunged to prevent recoveries by parties who do not hold valid claims against LBHI.

RESERVATION OF RIGHTS

21. The Plan Administrator reserves all rights to object on any other bases to any No Liability Claim as to which the Court does not grant the relief requested herein. The Plan Administrator reserves the right to conduct discovery as to the No Liability Claims and any matters raised by Claimants and to supplement this and other filings as a result thereof.

NOTICE

22. No trustee has been appointed in these chapter 11 cases. Notice of this omnibus objection has been provided to (i) the United States Trustee for Region 2; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) each claimant listed on Exhibit A; and (vi) all other parties entitled to notice in accordance with the procedures set forth in the second amended order entered on June 17, 2010 governing case management and administrative procedures for these cases [ECF No. 9635]. The Plan Administrator submits that no other or further notice need be provided.

23. No previous request for the relief sought herein has been made by the Plan Administrator or the Chapter 11 Estates to this or any other Court.

WHEREFORE the Plan Administrator respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: November 16, 2015
New York, New York

/s/ Garrett A. Fail
Garrett A. Fail

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Lehman Brothers Holdings Inc.
and Certain of Its Affiliates

EXHIBIT A

OMNIBUS OBJECTION 514: EXHIBIT A - NO LIABILITY CLAIMS

NAME	CASE NUMBER	DEBTOR NAME	FILED DATE	CLAIM #	ASSERTED TOTAL CLAIM DOLLARS	AMOUNTS TO BE DISALLOWED	REASON FOR PROPOSED DISALLOWANCE
1 ANUWAR, SHERRINA EVELINE	08-13555 (SCC)	Lehman Brothers Holdings Inc.	08/12/2009	8033	\$17,950.59	\$17,950.59	No Liability
2 ARES ENHANCED CREDIT OPPORTUNITIES FUND LTD	08-13555 (SCC)	Lehman Brothers Holdings Inc.	09/21/2009	21850	\$3,303,631.09	\$3,303,631.09	No Liability
3 ARES XI CLO LTD.	08-13555 (SCC)	Lehman Brothers Holdings Inc.	09/21/2009	21898	\$2,339,072.03	\$2,339,072.03	No Liability
4 ARES XII CLO LTD.	08-13555 (SCC)	Lehman Brothers Holdings Inc.	09/21/2009	21897	\$3,347,364.22	\$3,347,364.22	No Liability

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re : **Chapter 11 Case No.**
:
LEHMAN BROTHERS HOLDINGS INC., et al., : **08-13555 (SCC)**
:
Debtors. : **(Jointly Administered)**

x

**ORDER GRANTING FIVE HUNDRED FOURTEENTH
OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY CLAIMS)**

Upon the five hundred fourteenth omnibus objection to claims, dated November 13, 2015 (the “Five Hundred Fourteenth Omnibus Objection to Claims”),¹ of Lehman Brothers Holdings Inc., as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors, seeking to disallow and expunge the No Liability Claims pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, and this Court’s order approving procedures for the filing of omnibus objections to proofs of claim [ECF No. 6664], all as more fully described in the Five Hundred Fourteenth Omnibus Objection to Claims; and due and proper notice of the Five Hundred Fourteenth Omnibus Objection to Claims having been provided as stated therein, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Five Hundred Fourteenth Omnibus Objection to Claims is in the best interests of the Chapter 11 Estates, their creditors, and all parties in interest, and that the legal and factual bases set forth in the Five Hundred Fourteenth Omnibus Objection to Claims establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Five Hundred Fourteenth Omnibus Objection to Claims.

ORDERED that the relief requested in the Five Hundred Fourteenth Omnibus Objection to Claims is granted; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the No Liability Claims listed on Exhibit 1 annexed hereto are disallowed and expunged in their entirety with prejudice; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2015
New York, New York

UNITED STATES BANKRUPTCY JUDGE